

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

THE PRUDENTIAL INSURANCE)	CIVIL NO. 07-00616 SOM-LEK
COMPANY OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	
)	
ESTATE OF JOEL SOLEVILLA)	
NORVA, DECEASED, ET AL.,)	
)	
Defendants.)	
_____)	

**REPORT OF SPECIAL MASTER ON PLAINTIFF'S
MOTION FOR DETERMINATION OF REASONABLE ATTORNEYS' FEES**

Before the Court, pursuant to a designation by Chief United States District Judge Susan Oki Mollway, is Plaintiff the Prudential Insurance Company of America's ("Prudential") Motion for Determination of Reasonable Attorneys' Fees ("Motion"), filed on June 22, 2009. Plaintiff requests an award of \$53,448.00 in attorneys' fees, \$2,021.45 in costs, and \$2,585.51 in Hawaii general excise tax, for a total award of \$58,054.96.¹ Defendant Azucena B. Crawford² filed her memorandum in opposition on July 20, 2009, and Prudential filed its reply on August 3, 2009.

¹ The \$58,054.96 amount is not the total fees and expenses incurred in this case. This amount represents the amount counsel billed Prudential for. Prudential suggests this as one possible measure of a reasonable award. [Mem. in Supp. of Motion at 3.]

² Azucena Crawford states that her husband, Defendant Clifford J. Crawford, passed away earlier this year. [Mem. in Opp. at 2.]

The Court finds this matter suitable for disposition without a hearing pursuant to Rule LR7.2(d) of the Local Rules of Practice of the United States District Court for the District of Hawaii ("Local Rules"). After reviewing the parties' submissions and the relevant case law, the Court FINDS AND RECOMMENDS that the Prudential's Motion be GRANTED IN PART AND DENIED IN PART. The Court RECOMMENDS that the district judge award Prudential \$25,000.00.

BACKGROUND

In August 2000, Yolanda C. Crawford purchased a life insurance policy from Prudential. The policy had a \$100,000.00 death benefit. Yolanda Crawford named Joel Solevilla Norva as the primary beneficiary, and her three children as the contingent beneficiaries. In November 2003, Yolanda Crawford had another child, but she did not revise the Policy to include him as a beneficiary.

On July 2, 2006, Joel Norva allegedly shot Yolanda Crawford and one of her daughters, then shot himself. Yolanda Crawford and Joel Norva died at the scene. No criminal action was ever filed in connection with Yolanda Crawford's death because of the death of the primary suspect. On or about July 5, 2006, Prudential was notified of Yolanda Crawford's death and Joel Norva's presumed culpability in her death.

On December 20, 2007, Plaintiff filed its Complaint for

Interpleader and Declaratory Relief ("Complaint") against Defendant Estate of Joel Solevilla Norva, Deceased ("Defendant Estate"), Defendant Lillian B. Koller, Director of Human Services, State of Hawaii, as Permanent Custodian of Yolanda Crawford's four children ("Defendant DHS"), and Defendants Azucena Crawford and Clifford Crawford (collectively "Defendants Crawford"). The Complaint states that Defendant DHS was named as the children's permanent custodian by Hawaii family court orders dated May 22, 2007 and that Defendants Crawford were Yolanda Crawford's parents and the children's grandparents.

The Complaint states that, upon Yolanda's Crawford's death, the death benefit under her insurance policy, plus any applicable interest, became due to the rightful beneficiary or beneficiaries. Under Hawaii law, however, if a beneficiary of a life insurance policy feloniously and intentionally causes the insured's death, he is not entitled to any benefit under the policy. The policy becomes payable as though that beneficiary disclaimed any benefit. Hawaii law also requires that, in the absence of a conviction establishing who killed the insured, the court must determine by a preponderance of the evidence whether the intended beneficiary would be found guilty of feloniously and intentionally killing the insured.

The Complaint states that Yolanda Crawford died intestate and that Defendant Estate was the primary beneficiary

of the life insurance policy. The Complaint also notes that the three contingent beneficiaries named in the policy, as well as Yolanda Crawford and Joel Norva's child born after the policy went into effect, may claim entitlement to benefits under the policy. All four children, however, are minors who would not be competent to receive direct payment of the policy's benefits. The Complaint stated that Defendant DHS, as the children's permanent guardian, and Defendants Crawford, who had physical custody of the children and intended to adopt them,³ may claim entitlement to the policy benefits. The Complaint asks the district court to determine whether any of the defendants is the rightful beneficiary under Yolanda Crawford's insurance policy. If so, Prudential asks the court to order interpleader of the policy benefits and to discharge Prudential and release it from all liability except to the person or persons found to be the rightful beneficiary.

Prudential filed a Motion for Discharge on December 4, 2008. On April 15, 2009, this Court issued its Findings and Recommendation to Grant Plaintiff's Motion for Discharge ("F&R"). This Court recommended, *inter alia*, that the district judge order Prudential to deposit the proceeds of Yolanda Crawford's life insurance policy ("Interpleader Funds") with the district court

³ On March 3, 2008, Azucena and Clifford Crawford adopted all four of Yolanda Crawford's children.

and dismiss Prudential from the case after Prudential made the deposit. The F&R also recommended that the district judge enter an order stating that Prudential is entitled to recover its reasonable attorneys' fees and expenses incurred in the instant action from the Interpleader Funds, subject to a determination of the amount of the award based on a filing of proof of such attorneys' fees and expenses. The district judge adopted the F&R on May 5, 2009. Prudential deposited the Interpleader Funds, totaling \$119,909.85, in two deposits, one on May 27, 2009 and one on June 1, 2009. The Clerk of the Court entered final judgment in Prudential's favor on June 18, 2009. The instant Motion followed.

Prudential states that \$58,054.96 is the actual amount counsel billed Prudential. This amount represents work done through June 30, 2008. Since that time, counsel performed additional work, but deferred further billing because of the unexpectedly high amount of fees in this case. The total deferred charges through April 30, 2009 are \$50,082.00 in attorneys' fees and \$654.84 in costs, for a pretax total of \$50,736.84. Prudential acknowledges that to request all of the fees counsel incurred in this case would exceed the policy amount and that the amount of a fee award in an interpleader action is within the district court's sound discretion. Prudential therefore asks the district court to make a reasonable award and

offers the amount actually billed, \$58,054.96, as a suggestion.

[Mem. in Supp. of Motion at 2-3.]

In her memorandum in opposition, Azucena Crawford states that she is grateful for Prudential's efforts to resolve the claims surrounding Yolanda Crawford's policy and that she appreciates Prudential's attempt to reach a compromise regarding the fee award. She also agrees that Prudential's counsel should receive reasonable, fair compensation for their work in this case. Azucena Crawford, however, objects to the amount that Prudential has suggested for the fee award. She argues that this case did not present novel legal or factual issues and therefore it does not warrant the amount of fees, billed and un-billed, incurred in this case. Azucena Crawford suggests that an award of \$25,000.00 would be fair, reasonable, and just. [Mem. in Opp. at 4.]

In its reply, Prudential argues that the case was complicated by the fact that Defendant DHS filed a motion to dismiss which required Prudential to address issues regarding federal jurisdiction and the Eleventh Amendment, citizenship of the interested parties, and who the real parties in interest were. Prudential's counsel also had perform the additional tasks associated with serving Defendant Estate by publication. Prudential therefore argues that the requested award is justified because this case involved substantially more work than most

interpleader actions. Further, Prudential notes that Azucena Crawford does not point to any specific portions of the billing statements that are unreasonable, and she does not object to counsel's requested hourly rates. Prudential also emphasizes that counsel already reduced the amount actually billed with significant courtesy discounts.

DISCUSSION

I. Entitlement to Attorneys' Fees

A court has discretion to award attorneys' fees and costs to the stakeholder in an interpleader action "when it is fair and equitable to do so." See Island Title Corp. v. Bundy ("Bundy"), 488 F. Supp. 2d 1084, 1093-94 (D. Haw. 2007) (citing Gelfgren v. Republic National Life Insurance Co. et al., 680 F.2d 79, 81 (9th Cir. 1982)) (some citations omitted). In the F&R, this Court found that Prudential is entitled to its reasonable attorneys' fees and expenses incurred in this action. [F&R at 9-10.] As noted, *supra*, the district judge adopted the F&R. Thus, the only remaining issue is the amount of the award.

II. Calculation of Award

"The amount of fees to be awarded in an interpleader action is committed to the sound discretion of the district court." Trs. of the Dirs. Guild of Am.-Producer Pension Benefits Plans v. Tise, 234 F.3d 415, 426 (9th Cir. 2000) (citation omitted). However, the "'test for determining attorneys' fees in

an interpleader action is less rigorous than the more elaborate factors used to consider fee awards in . . . other contexts In an interpleader action, the broad rule is reasonableness.'" Sun Life Assurance Co. of Canada v. Bew, 530 F. Supp. 2d 773, 776 (E.D. Va. 2007) (quoting Sun Life v. Grose, 466 F. Supp. 2d 714, 717 (W.D. Va. 2006)) (some citations and quotation marks omitted) (alterations in original); see also Noeller v. Metro. Life Ins. Co., 190 F.R.D. 202, 207 (E.D. Tex. 1999); Metro. Life Ins. Co. v. Billini, CIV. S-06-02918 WBS KJM, 2007 WL 4209405, at *3 (E.D. Cal. Nov. 27, 2007) (quoting Sun Life Assurance Co. of Canada v. Chan, 2003 WL 22227881, at *3 (N.D. Cal. 2003)).

"[A]s a general rule, federal law rather than state law governs the equitable power of the federal court to award attorney's fees to the interpleader stakeholder." Bundy, 488 F. Supp. 2d at 1095 (citing Palomas Land & Cattle Co. v. Baldwin, 189 F.2d 936, 938 (9th Cir. 1951)) (some citations omitted). Under federal law, reasonable attorneys' fees are determined by multiplying the number of hours reasonably expended on the case by a reasonable hourly rate. See Fischer v. SJB-P.D., Inc., 214 F.3d 1115, 1119 (9th Cir. 2000) (applying "lodestar" calculation set forth in Hensley v. Eckerhart, 461 U.S. 424, 433 (1983)). This Court will use the lodestar method as a guide in the instant case, albeit not in the same manner as in other cases.

A. Reasonable Hourly Rate

In determining whether an hourly rate is reasonable, the Court considers the experience, skill, and reputation of the attorney requesting fees. See Webb v. Ada County, 285 F.3d 829, 840 & n.6 (9th Cir. 2002). The reasonable hourly rate should reflect the prevailing market rates in the community. See id.; see also Gates v. Deukmejian, 987 F.2d 1392, 1405 (9th Cir. 1992), as amended on denial of reh'g, (1993) (noting that the rate awarded should reflect "the rates of attorneys practicing in the forum district").

Counsel billed Prudential for the work of two attorneys, Wilson M.N. Loo, Esq., and Laura D. Anderson Price, Esq. Mr. Loo's hourly rates were \$290 and \$300, and Ms. Price's hourly rate was \$225. [Motion, Decl. of Ronald I. Heller at ¶¶ 2, 6.] Mr. Loo was admitted to the Hawaii State Bar in 1980, and Ms. Price was admitted in 1996.

This Court finds Ms. Price's requested hourly rate to be manifestly reasonable. The Court, however, finds Mr. Loo's requested hourly rate to be slightly excessive. This Court generally awards an hourly rate of \$285 to attorneys with experience comparable to Mr. Loo's. For example, this Court routinely awards Stanley Levin, Esq., who was admitted to the bar in 1972, \$285 per hour. See, e.g., Melodee H., et al. v. Dep't of Educ., State of Hawaii; CV 07-00256 HG-LEK, Report of Special

Master on Pltfs.' Mtn. for an Award of Attorneys' Fees and Costs, filed 09/23/08 (dkt. no. 40), at 20.⁴ In Won, et al. v. England, et al., CV 07-00606 JMS-LEK, which was also an interpleader action, counsel for Defendant USA Federal Credit Union, Steven Guttman, Esq., requested \$310 per hour and was awarded \$285. Mr. Guttman was admitted to the bar in 1973. See Report of Special Master on Def.'s Mtn. for Attorney's Fees & Costs, filed 7/15/08 (dkt. no. 84), at 7-8.⁵ This Court finds that there is no reason to deviate from its general practice because, although the instant case involved more than most interpleader actions do, the factual and legal issues in this case were not extraordinary. The Court therefore finds that a reasonable hourly rate for Mr. Loo is \$285 per hour.

B. Hours Reasonably Expended

Beyond establishing a reasonable hourly rate, a party seeking attorneys' fees bears the burden of proving that the fees and costs taxed are associated with the relief requested and are reasonably necessary to achieve the results obtained. See Tirona v. State Farm Mut. Auto. Ins. Co., 821 F. Supp. 632, 636 (D. Haw. 1993) (citations omitted).

In the present case, Prudential suggests that the

⁴ On October 27, 2008, the district judge adopted the report of special master in Melodee H.

⁵ On August 18, 2008, the district judge adopted the report of special master in Won.

amount of fees that counsel actually billed would be a reasonable award in this case. Prior to applying approximately \$10,000 in courtesy discounts, counsel's billings reflect 207.1 hours of work by Mr. Loo and 17.0 hours of work by Ms. Price. Prudential argues that the \$53,448.00 in fees, plus tax, is reasonable due to the complexity of the case, the significant courtesy discounts applied to the amounts billed, and the deferral of approximately \$50,000 worth of attorneys' fees for work performed after June 30, 2008.

First, the Court notes that, if it were to apply a traditional lodestar analysis, it would likely find that the number of hours counsel spent on this case was excessive. Further, because this is an interpleader action, the Court must take a number of other factors into account.

Because the interpleader plaintiff is supposed to be disinterested in the ultimate disposition of the fund, attorneys' fee awards are properly limited to those fees that are incurred in filing the action and pursuing the plan's release from liability, not in litigating the merits of the adverse claimants' positions. Compensable expenses include, for example, preparing the complaint, obtaining service of process on the claimants to the fund, and preparing an order discharging the plaintiff from liability and dismissing it from the action. Because the scope of compensable expenses is limited, attorney's fee awards to the 'disinterested' interpleader plaintiff are typically modest. Moreover, because attorneys' fees are paid from the interpleaded fund itself, there is an important policy interest in seeing that the fee award does not deplete the fund at the expense of the party who is ultimately deemed entitled to it.

Bundy, 488 F. Supp. 2d at 1096 (quoting Trustees of the Director's Guild of America-Producer Pension Benefits Plans v. Tise, 234 F.3d 415, 426-27 (9th Cir. 2000)).

In fact, courts outside of the Ninth Circuit have denied fees where the stakeholder is an insurance company. See Billini, 2007 WL 4209405, at *3 (citing Aetna U.S. Healthcare v. Higgs, 962 F. Supp. 1412, 1414-15 (D. Kan. 1997); Sun Life Assurance Co. of Canada v. Thomas, 735 F. Supp. 730, 733 (W.D. Mich. 1990); Life Ins. Co. of N. Am. v. Nava, 667 F. Supp. 279, 280 (M.D. La. 1987); Mutual of Omaha Ins. Co. v. Dolby, 531 F. Supp. 511, 517 (E.D. Pa. 1982)). The rationale behind such a rule is that "competing claims 'are part of the ordinary course of business for an insurance company' and an interpleader action should not be utilized to transfer these 'ordinary business expenses to the claimants.'" Id. (quoting Mutual of Omaha Ins. Co., 531 F. Supp. at 517). While the Ninth Circuit does not automatically deny fees and expenses when the stakeholder is an insurance company, this Court believes that the rationale behind such a rule is relevant to the determination of what the reasonable, modest fee should be.

Prudential's counsel should be compensated for preparing the Complaint, obtaining service of process on the defendants, including service on Defendant Estate by publication, and obtaining its discharge from the case. In addition,

Prudential's counsel should be compensated for responding to Defendant DHS's motion to dismiss, which addressed the federal court's jurisdiction over the action and did not address Defendant DHS's entitlement to the funds. Azucena Crawford argues that \$25,000.00 would be a reasonable award in this case. [Mem. in Opp. at 4.] This Court agrees.

For purposes of the recommended fee award, the Court will attribute the compensable hours in this case to Mr. Loo because he performed the majority of the work. An award of \$25,000.00, tax included, would represent approximately 84.0 hours of work by Mr. Loo. The Court finds that this is a reasonable number of hours for the compensable tasks in this case.

C. Summary of Recommended Award

The Court therefore FINDS that a reasonable attorneys' fee for the compensable tasks in this case is \$25,000.00. The Court finds that the circumstances of this case do not warrant a higher award. Although some of the procedural aspects of this case required more work than most interpleader actions of this nature, the basic facts of this case, while unfortunate, are neither novel nor extraordinarily complex. Prudential has undoubtedly handled other cases where a policy beneficiary is suspected of killing the insured, creating various competing claims. Further, the recommended award is one fourth of the

policy amount and a significant portion of the Interpleader Funds. To grant a higher award would violate the important policy interest in seeing that the fee award does not deplete the funds at the expense of the person who is ultimately deemed entitled to them. See, e.g., Billini, 2007 WL 4209405 at *4 (awarding \$2,700 in attorneys' fees where the stakeholder sought \$8,717.82 and the decedent's policy was for \$46,000); Mutual of Omaha Ins. Co. v. Estate of Arachikavitz, No. 2:06-cv-00830-BES(LRL), 2007 WL 2788604, at *4-*5 (D. Nev. Sept. 21, 2007) (awarding \$5,000 where \$31,919.15 was available and the requested fees were over half that amount). The Court therefore RECOMMENDS that the district judge award Prudential \$25,000.00 in attorneys' fees.

III. Costs

Prudential seeks \$2,021.45 in costs, plus tax. The Court RECOMMENDS that the district judge DENY this request because an award of more than the \$25,000.00 already recommended would unduly deplete the Interpleader Funds.

CONCLUSION

In accordance with the foregoing, this Court, acting as Special Master, FINDS AND RECOMMENDS that Prudential's Motion for Determination of Reasonable Attorneys' Fees, filed on June 22, 2009, be GRANTED IN PART AND DENIED IN PART. The Court RECOMMENDS that the district judge award Prudential \$25,000.00 in

attorneys' fees and that the district judge DENY the Motion in all other respects.

IT IS SO FOUND AND RECOMMENDED.

DATED AT HONOLULU, HAWAII, December 8, 2009.



/S/ Leslie E. Kobayashi
Leslie E. Kobayashi
United States Magistrate Judge

**THE PRUDENTIAL INSURANCE COMPANY OF AMERICA V. ESTATE OF JOEL
SOLEVILLA NORMA, DECEASED, ET AL; CIVIL NO 07-00616 SOM-LEK;
REPORT OF SPECIAL MASTER ON PLAINTIFF'S MOTION FOR DETERMINATION
OF REASONABLE ATTORNEYS' FEES**